

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

HABIB A. ALI,  
*aka*, HABIB AMIR ALI,  
*aka*, FLOYD PAYNE,

Petitioner,

v.

Civil Action No. 2:09cv81  
(Judge Maxwell)

ADMINISTRATOR LEWIS W. BARLOW,

Respondent.

**MEMORANDUM OPINION AND ORDER OF DISMISSAL**

On July 13, 2009, the pro se<sup>1</sup> petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 and paid the requisite \$5.00 filing fee. On August 4, 2009, the United States Magistrate Judge made a preliminary review of the petition and determined that it was unlikely that the petitioner has exhausted his state remedies before seeking relief from this Court. Accordingly, the United States Magistrate Judge entered an Order directing the respondent to file a limited response on the issues of exhaustion. The time for the respondent to respond has not yet expired.

Currently pending before the Court, is the petitioner's motion, filed October 19, 2009, seeking a voluntary dismissal of this matter. It is apparent from the content of the pleading that the petitioner has not exhausted his state remedies. Therefore, his petition has been prematurely filed, and would be subject to dismissal upon the filing of the respondent's answer.

Accordingly, in the interests of justice and judicial economy, it is hereby **ORDERED** that the petitioner's Motion (Doc. 10) is **GRANTED**, and this case is hereby **DISMISSED WITHOUT**

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<sup>1</sup>"Pro se" described a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1341 (9<sup>th</sup> ed. 2009).

FILED  
AUG 21 2009  
U.S. DISTRICT COURT  
ELKINS WV 26241


**PREJUDICE.**

Should the petitioner choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is **ADVISED** that he must file a notice of appeal with the Clerk of this Court within 30 days after the date of the entry of the judgment order. Upon reviewing the notice of appeal, this Court will either issue a certificate of appealability or state why a certificate should not issue in accordance with Federal Rule of Appellate Procedure 22(b)(1). If this court should deny a certification, the petitioner may request or circuit judge of the United States Court of Appeals for the Fourth Circuit to issue the certificate.

**IT IS SO ORDERED.**

The Clerk is **DIRECTED** to transmit a copy of this memorandum opinion and order to the petitioner by certified mail, return receipt requested, to his last known address as reflected on the docket sheet. In addition, the Clerk of the Court is directed to provide a copy of this Order to all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Filing in the United States District Court.

DATED: *August 21, 2009*

  
ROBERT E. MAXWELL.  
UNITED STATES DISTRICT JUDGE